

MEMORANDUM

DATE: DECEMBER 17, 1998

TO: HONORABLE MAYOR HARPER AND MEMBERS OF CITY COUNCIL

FROM: GLENN GIMBUT, ASST. CITY ATTORNEY 

RE: OPINION REGARDING POWER OF MAYOR AS PRESIDING OFFICER

This opinion is in response to a request by Alex Ruiz and Mayor Harper for an opinion regarding the powers of the Mayor as presiding officer to conduct meetings of City Council.

San Luis is a general law municipality, as opposed to a charter city. As a general law city the powers of the city and its officers are as defined by statute. The ability of the city to modify those powers are limited in that unless a charter is created, one cannot pass any ordinance which would conflict with state statute, regarding the organization of the city, and the powers conferred upon the officers, as well as the limitations placed upon those powers.

ARS §9-499.01 and §9-276 incorporate the provisions of the powers and duties of towns to general law cities. ARS §9-272.01 allows a mayor to be chosen directly by the electors, and San Luis elected to adopt this alternative procedure.

ARS §9-236 provides that the mayor shall be the chief executive officer of the city. The ordinances of the city provide that the mayor, as the chief executive officer, is the presiding officer at the meetings of council.

CJS, Municipal Corporations, §400 states that as a general principle of law, that basic parliamentary rules must govern the conduct of meetings.

CJS, Parliamentary Law, §6 - Conduct of Business, provides:

“A person charged with the responsibility of presiding over a body has discretion or implied authority to maintain the order and dignity becoming that body.

The opportunity to deliberate, and if possible to convince their fellow members is the right of a minority of which they cannot be deprived by the arbitrary will of the majority. However, it is within the discretionary authority of a presiding officer to insist upon the orderly recognition of speakers, and to make judgments as to what methods to use to maintain order at the meetings.”

I have taken the liberty of asking the League of Arizona Cities and Towns to send us ten copies of their pamphlet on basic parliamentary procedure. Hopefully by studying this book, members of council can understand the correct method of raising an issue of discussion before a

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vote occurs so that they can express their point of view in an attempt to persuade their fellow members of council. However, it is the right of the Mayor to prevent unruly outbursts, and to maintain order. Insultive and undignified proceedings does not help the community that we serve.

Attached is a copy of the case of *Arrington v. Moore*, 31 Md. App. 448, 358 A. 2d 909 (1976). In this particular case there was a heated public debate occurring within the community regarding the management of Town of Seat Pleasant. A flyer had been circulated critical of the Town Manager. During the Council discussion, a member of council began reading the flyer. When he got to the point where the flyer was critical of the manager, the manager arose, approached the mayor, put himself two feet in front of the mayor, and demanded five times "Am I a part-time manager?" Three times the mayor asked him to "Take a seat Mr. Moore." The fourth time the mayor told the chief of police "Get him out of here." The police did. The manager sued for false arrest, false imprisonment, and assault and battery. Here the court held that an official charged with the responsibility of presiding over a public body has discretion or implied authority to maintain the order and dignity becoming that body. Further the court recognized that the mayor had the right "to make quick judgments as to what method to use to maintain order at emotionally charged meetings." The court found the mayor acted within his discretion in ordering the manager removed, and he and the other town officers were immune from suit as a result.

While *Arrington* is an extreme case, such occurrences are not unknown in Arizona. I have witnessed such uses of the gavel in Apache Junction and have heard of a councilman being forcibly removed from a meeting in Quartzsite when he acted in a violent and bizarre manner. Thankfully none of our meetings have ever gotten to this point. However, meetings must be conducted in a dignified manner, and the Mayor does have the power of the gavel. That power includes the right to limit discussion and keep the proceedings orderly and dignified.